

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING—DIVISION OF WATER RIGHTS  
OCTOBER 17, 2002**

**ITEM 13**

**SUBJECT**

CONSIDERATION OF AN ORDER POSTPONING DISMISSAL OF PHASE 8 OF THE  
BAY-DELTA WATER RIGHTS HEARING

**DISCUSSION**

Order WR 2001-05, adopted April 26, 2001, requires the Department of Water Resources (DWR) or the United States Bureau of Reclamation (USBR) to meet certain objectives in the 1995 Bay-Delta Plan until the SWRCB adopts a further decision assigning responsibility for meeting those objectives. Order WR 2001-05 also stays the resumption of Phase 8 of the Bay-Delta Water Rights Hearing for a period of eighteen months and automatically dismisses Phase 8 at the end of eighteen months on October 26, 2002, unless the SWRCB receives notice from the DWR or the USBR requesting resumption of Phase 8.

The proposed order would extend the stay and postpone the automatic dismissal of Phase 8 of the Bay-Delta Water Rights Hearing, at the request of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR). Under the proposed order, Phase 8 would be automatically dismissed on January 31, 2003, instead of October 26, 2002, unless the DWR or the USBR requests either a further extension of the stay and a further postponement of the dismissal, or a hearing as specified in revised Ordering Paragraph A in the proposed order.

**POLICY ISSUES**

Should the SWRCB adopt the proposed order?

**FISCAL IMPACT**

None.

**REGIONAL BOARD IMPACT**

None.

**STAFF RECOMMENDATION**

Staff recommends that the SWRCB adopt the proposed order.

Policy Review: \_\_\_\_\_

Legal Review: \_\_\_\_\_

Fiscal Review: \_\_\_\_\_

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2002 -**

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In the Matter of  
Implementation of Water Quality Objectives  
for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary,  
Amending License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the United States Bureau of Reclamation and Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the Department of Water Resources.

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SOURCES: Sacramento and San Joaquin Rivers and their tributaries, and the Sacramento-San Joaquin Delta Estuary

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**ORDER POSTPONING DISMISSAL OF  
PHASE 8 OF THE BAY-DELTA WATER RIGHTS HEARING**

BY THE BOARD:

**1.0 INTRODUCTION**

By this order, the State Water Resources Control Board (SWRCB) extends the stay and postpones the automatic dismissal of Phase 8 of the Bay-Delta Water Rights Hearing, at the request of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR). Under this order, Phase 8 will be automatically dismissed on January 31, 2003, unless the DWR or the USBR requests either a further extension of the stay and a further postponement of the dismissal, or a hearing as specified in revised Ordering Paragraph A, below.<sup>1</sup>

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<sup>1</sup> From July 1, 1998 through December 21, 1999, the SWRCB conducted Phases 1 through 7 of the Bay-Delta Water Rights Hearing. On December 29, 1999, the SWRCB adopted Decision 1641, determining some of the responsibilities for meeting the objectives in the 1995 Bay-Delta Plan and resolving other related issues. On April 11 and 12, 2000, the SWRCB conducted a session of Phase 8 of the Bay-Delta Water Rights Hearing to consider a petition for change filed by South Sutter Water District in connection with a settlement agreement to resolve the responsibilities of water right holders on the Bear River. The SWRCB approved the petition on July 20, 2000, in Order WR 2000-10. The SWRCB stayed the remainder of Phase 8 by Order 2001-05 on April 26, 2001 and included an automatic dismissal of the hearing, effective October 26, 2002.

## **2.0 FINDINGS**

Pursuant to Order WR 2001-05, Phase 8 of the Bay-Delta Water Rights Hearing would be dismissed automatically on October 26, 2002. By letters dated October 3 and 4, 2002, the DWR and the USBR requested that the SWRCB postpone the automatic dismissal of Phase 8 until December 15, 2002, to give them additional time to complete negotiations and execute a Short-term Settlement Agreement to conduct measures that will help implement the objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, adopted May 22, 1995 (1995 Bay-Delta Plan). This order approves postponement as requested by the DWR and the USBR, but sets the dismissal date at January 31, 2003, because if for any reason the parties do not sign an agreement by December 15, 2002, the next Board meeting when the SWRCB could further extend the dismissal date will be in January.

This order has no effect on any ordering provision of Order WR 2001-05 other than Paragraph A of the Order on page 8.

## **ORDER**

1. Ordering Paragraph A in SWRCB Order WR 2001-05 is hereby amended to read as follows:

A. IT IS HEREBY ORDERED that Phase 8 of the Bay-Delta Water Rights Hearing is stayed until January 31, 2003. Phase 8 will be automatically dismissed on January 31, 2003 unless the DWR or the USBR notifies the SWRCB in writing, before January 31, 2003, that it is requesting the SWRCB to resume Phase 8.<sup>2</sup> The purpose of the stay and

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<sup>2</sup> The stay and dismissal do not apply to the following proceedings related to the Bay-Delta Proceedings:

- (a) Any proceedings necessary to respond to a writ of mandate or other court order, decision or opinion issued in connection with litigation to which the SWRCB is a party.
- (b) An order necessary to implement new water quality objectives or amendments to the 1995 Bay-Delta Plan.
- (c) A proceeding on an issue that is sufficiently unrelated [e.g. carriage water] to the subject of long term responsibility to meet the flow-dependent objectives in the 1995 Bay-Delta Plan that the proceeding will not adversely affect any negotiations among the parties seeking to settle their responsibilities to meet the Bay-Delta objectives. The SWRCB shall hold a workshop to obtain input from the parties before initiating any such proceedings.
- (d) A proceeding relating to the implementation of the narrative salmon doubling objective set forth in Table 3 of the objectives in the 1995 Bay-Delta Plan. The existing D-1641 terms and conditions for fish and wildlife protection provide reasonable protection for a range of aquatic species in the Bay-Delta Estuary and help implement all of the objectives, including the narrative salmon doubling objective. Compliance with the existing flow objectives and other objectives in the 1995 Bay-Delta Plan may be sufficient to implement the salmon objective. Moreover, statutorily mandated non-flow fish restoration programs currently being

October 8, 2002

dismissal is to allow water right holders whose rights might be amended after Phase 8 to negotiate toward a mutual settlement of their responsibilities to meet the flow-dependent objectives in the 1995 Bay-Delta Plan. If the DWR or the USBR requests in writing a hearing to allocate responsibilities to meet the flow-dependent objectives to other parties, the SWRCB expeditiously will convene a water right hearing, will determine whether the water right holders in the watersheds of the Sacramento, Cosumnes, and Calaveras Rivers have responsibility to meet the flow-dependent objectives in the 1995 Bay-Delta Plan, and will determine the amount of such responsibility in a decision or order.

2. Except as specifically provided herein, Order WR 2001-05 remains in full force and effect.

### **CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 17, 2002.

AYE:

NO:

ABSENT:

ABSTAIN:

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Maureen Marché  
Clerk to the Board

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implemented in other forums (e.g., CVPIA implementation and CALFED) will help implement the salmon objective. As other programs are implemented and monitored, the SWRCB will review the progress toward meeting the objective and may take additional action if needed.